2, c. 3, sec. 2; So. Dak. Const., art. 5, sec. 13; N. H. Const., part 2, sec. 73; R. I. Const., art. 10, sec. 3; etc. If in accordance with this constitutional right the proper authority requires of a court its opinion, that court must be bound to answer. The one asking should be, in right and logic, the proper judge of the reasonableness of the demand or the solemnity of the occasion. See 26 Harv. L. Rev. 655; H. A. Dubuque, "The Duty of Judges as Constitutional Advisers," *supra*, 386. But see *In re Penitentiary Com'rs.*, 19 Colo. 409, 35 Pac. 915; *In the Matter of the North Missouri R. R.*, 51 Mo. 586; *Opinion of the Justices*, 148 Mass. 623, 21 N. E. 439; *Opinion of the Justices*, 95 Me. 564, 51 Atl. 224, *contra*. Of course, if the request is patently unreasonable, frivolous, or in excess of the scope of the constitutional provision, the court may refuse, for such questions it is not bound to answer. But in the principal case the request is reasonable and within the express scope. In refusing to answer, the court flies in the face of the state Constitution. That its reasons for refusing are the excellent reasons always to be advanced against any court's giving *ex parte* advice cannot ameliorate the error. The duty of the Supreme Court is to observe the constitution as it is framed, not as it should be framed.

Corporations — Directors and Other Officers — Knowledge of a Director as Knowledge of a Corporation. — The defendant corporation, which held certain stock as pledgee and was about to exercise its power to sell to the highest bidder, appointed three directors to find a purchaser. Two other directors received a bid from a prospective purchaser and, scheming for individual profit, advised him to make a smaller bid. The smaller bid was made to the three directors and was accepted by all the directors sitting as a board. The plaintiff as assignee of the pledgor sued for the alleged conversion of this stock on the ground that the knowledge of the two directors of the larger bid was notice to the corporation. *Held*, that such knowledge is not imputed to the corporation. *Western Securities Co.* v. *Silver King Consol. Mining Co.*, 192 Pac. 664 (Utah).

For a discussion of this case see Notes, page 656, *supra*.

Damages — Measure of Damages — Compensation for Loss of Use of Personal Property. — Defendant wrongfully detained plaintiff's road-making outfit. Plaintiff sued for its return with damages for the value of its use during the period of detention. Defendant requested an instruction that, in determining the "use value," the jury should ". . . limit the same to the reasonable value of the use of said outfit . . . devoted to such use as the plaintiff had carried on prior to the seizure." This was refused. *Held*, that the instruction should have been given. *Montgomery* v. *Gallas*, 225 S. W. 557 (Tex.).

In an action of replevin the damages usually allowed are the interest on the capital value of the property for the period of wrongful detention. *Wadleigh* v. *Buckingham*, 80 Wis. 230, 49 N. W. 745; *Redmond* v. *American Mfg. Co.*, 121 N. Y. 415, 24 N. E. 924. See 4 Sutherland, Damages, 4 ed., § 1144. But, since the purpose of damages is adequate compensation, where the value of the use of the property exceeds such interest, it may be substituted therefor. *Allen* v. *Fox*, 51 N. Y. 562; *Forsee* v. *Zenner*, 193 S. W. (Mo.) 975. See Wells, Replevin, 2 ed., §§ 582, 583. The recognized test for ascertaining, with the requisite certainty, this "use value" is rental value. *Ocala Foundry Works* v. *Lester*, 49 Fla. 199, 38 So. 51; *MacKenzie* v. *Steeves*, 98 Wash. 17, 167 Pac. 50. It cannot be measured by the profits expected from the plaintiff's anticipated use of the property. *Williams* v. *Wood*, 55 Minn. 323, 56 N. W. 1066. See *Aber* v. *Bratton*, 60 Mich. 357, 362, 27 N. W. 564, 566. The principal case proposes a more definite criterion. See 1 Sedgwick, Damages, 9 ed., § 171 (b). It substitutes for the market value of the use the market value of the plaintiff's

past type of use. Though this aims at a closer approximation to actual compensation it would secure it only on the assumption that the plaintiff's efficiency is a constant. But it seems that the plaintiff should rather be entitled to charge the defendant a fair rental for the period of detention. Any clearly consequential damages arising proximately from the detention should also be recoverable. *O'Connor* v. *Bank of New South Wales*, 13 Vict. L. R. 820. See *Stevens* v. *Tuite*, 104 Mass. 328, 334.

DAMAGES — MEASURE OF DAMAGES: CONTRACTS — DAMAGES FOR BREACH OF A CONTRACT TO FARM ON SHARES. — By contract, the plaintiff was to furnish the labor in planting, cultivating, and preparing for market a crop of tobacco; the defendant was to furnish the land and materials, and the proceeds of the crop were to be divided equally. The defendant refused to allow the plaintiff to enter. Suit was brought immediately, before time for planting had arrived. *Held*, that the plaintiff cannot recover at this time. *Turpin* v. *Jones*, 225 S. W. 465 (Ky.).

For a discussion of the principles involved in this case, see NOTES, page 662, *supra*.

EVIDENCE — CORROBORATIVE EVIDENCE — DEGREE OF CORROBORATION REQUIRED. — The complainant brought proceedings under the Bastardy Act (35 & 36 VICT., c. 65) to charge the defendant with being the father of her illegitimate child. The act requires that the testimony of the complainant be corroborated in order to charge the putative father. It was proved in attempted corroboration (1) that the defendant called a doctor to attend the complainant when the child was born, (2) that he allowed the complainant and her child to remain in his house for five weeks after the birth, (3) that he never inquired as to the paternity of the child, (4) that he failed to answer a letter sent him by the complainant, charging him with being the father of her child. It also appeared that the complainant had been the defendant's housekeeper for three years. *Held*, that there was no sufficient corroboration of the complainant's testimony. *Thomas* v. *Jones*, [1921] 1 K. B. 22 (C. A.).

For a discussion of the principles involved in this case, see NOTES, page 667, *supra*.

EVIDENCE — DECLARATIONS CONCERNING INTENTION, FEELINGS OR BODILY CONDITIONS — ADMISSIBILITY OF AN UNCOMMUNICATED THREAT IN HOMICIDE CASE. — The defendant, on trial for murder, offered evidence of a threat against him made by the deceased but uncommunicated to him. Though there was great doubt as to which was the aggressor, this evidence was excluded. *Held*, that the exclusion was error. *Mott* v. *State*, 86 So. 514 (Miss.).

Communicated threats are relevant to show that the defendant acted reasonably in defending himself. Uncommunicated threats, which have no logical bearing to prove this, are relevant to show that the deceased was the aggressor when this point is in controversy on an issue of self-defense. *Stokes* v. *People*, 53 N. Y. 164. Considered as verbal acts such statements are not within the hearsay rule. But even if the hearsay rule does cover them, they come within the exception which permits such evidence to prove the speaker's state of mind. See *Mutual Life Ins. Co.* v. *Hillman*, 145 U. S. 285. Nevertheless danger of improper use and ease of manufacturing this kind of evidence have led to limitations on its admissibility. See 1 WIGMORE, EVIDENCE, § 111. No jurisdiction admits it where it is clear that the defendant was the aggressor. *State* v. *Tolla*, 72 N. J. L. 515, 62 Atl. 675. Many jurisdictions require that there be great doubt as to which was the aggressor before this evidence will be admitted. *Johnson* v. *State*, 54 Miss. 430. But the general and correct rule seems to be to admit it wherever there is any other evidence of an overt act by the deceased, or if there was no eyewitness to the act. Threats not directed